



## **DIVERSION/DISCIPLINE COMMITTEE MINUTES**

**DATE:** March 10, 2011

**SITE:** Department of Consumer Affairs  
1625 N. Market Blvd.  
Hearing Room S-102  
Sacramento, CA 95834

**MEMBERS PRESENT:** Dian Harrison, Chair  
Judy L. Corless, BSN, RN  
Richard Rice

**STAFF PRESENT:** Louise Bailey, M.Ed., RN, Executive Officer  
Stacie Berumen, Enforcement Division Chief  
Carol Stanford, Diversion Program Manager

The Chair called the meeting to order at about 9:15 a.m.

### **8.0 REVIEW AND APPROVE MINUTES:**

Approve/Not Approve: Minutes of January 5, 2011

**M/S/C: Moved by Judy Corless, Seconded by Rick Rice, Carried**

### **8.1 Nursys Discipline Data Comparison (Scrub) Update**

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records.

Currently, 1,805 records have been reviewed on the active license list. Determination was made whether the cases warranted a request for the other state's discipline documents. This review resulted in 1,050 requests for out-of-state documents. The documents will be evaluated and a decision made as to the appropriate action needed.

Review of the inactive license spreadsheet is in progress and will continue until complete. Holds have been placed on 1,915 inactive records to alert staff when a nurse on the list attempts to activate their license. This alert will allow staff to immediately request and review the records to determine if out-of-state discipline documents are needed for possible action on the license.

The status of the documents reviewed:

Referred to the Attorney General	278
Pleadings Received	236
Notices of Defense Received	132
Referred to Cite and Fine	37
Closed Without Action (Action taken by CA (prior to 2000) but not reported to Nursys or information approved at time of licensure)	488
Settlement or Decision Pending	106

**UPDATE:**

The National Council of State Boards of Nursing (NCSBN) announced at its Annual Meeting on or about August 12, 2010, a new process in development for non-licensure participating boards to participate in sharing discipline information. The NCSBN Board of Directors made the decision to allow modified member participation at their December 7-9, 2011 meeting. The Board of Directors met again on February 14-16, 2011, and decided there would be no fee charged for the modified member participation. NCSBN staff are in the process of preparing the contracts. Once the contract has been approved by all parties BRN/DCA information technology staff will begin the process to send all of our licensing data to NCSBN.

**AG COSTS:**

As of January 31, 2011, the BRN has expended \$411,997.50 at the AG's office on the Nursys Scrub cases.

**8.2 Internet Disclosure Policy**

The Board of Registered Nursing (BRN) began posting discipline information on its web site in 2006. This was done in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The BRN provides this information to better inform and protect California's health care consumers.

BRN provides information on the internet to indicate any disciplinary actions and their status through a series of codes from our legacy computer system. The discipline documents are added to support and explain actions taken.

In the last year, BRN staff has received requests to remove discipline documents from our website for a variety of reasons such as: it has been many years since the action was taken, the conviction included in the disciplinary action has been dismissed, expunged, or sealed, it hampers a licensee's ability to find employment, or the licensee is harassed by co-workers.

Enforcement staff has asked the committee and board members for a policy regarding discipline record retention on the internet.

**FULL BOARD RECOMMENDATION ON SEPTEMBER 24, 2010:**

Issue returned to the Diversion/Discipline Committee to create a policy for discipline record retention on the internet.

**SUB-COMMITTEE RECOMMENDATION ON NOVEMBER 16, 2010:**

Outside materials were not provided at the sub-committee meeting and held for next Diversion/Discipline Committee meeting for review and discussion.

**COMMITTEE RECOMMENDATION ON JANUARY 5, 2011:**

Provide the document prepared by DCA Supervising Legal Counsel, Don Chang, on December 30, 2010, to the full board for consideration and review at the January meeting.

**FULL BOARD RECOMMENDATION ON FEBRUARY 2, 2011:**

The board members requested staff prepare a series of options for consideration after reviewed and approved by DDC at their next meeting in March 2011.

**8.3 Disciplinary Guidelines**

The Board of Registered Nursing was tasked with implementing SB 1441. In order to comply with the mandate the BRN has been working with our DCA legal counsel to modify the Board of Registered Nursing's Recommended Guidelines for Disciplinary Orders and Conditions of Probation.

A regulatory proposal was sent to the Office of Administrative Hearings and was noticed to the public approximately two weeks after submission.

The proposed language changes will be provided under separate cover for review and discussion at the committee and upcoming board meeting. The plan is to hold a public hearing to obtain public comment on this matter at the June 2011 board meeting.

**8.4 Enforcement Program Update and Statistics****Staff**

In response to Executive Order, B-3-11 ordering a hiring freeze, DCA withdrew all exemption requests as a total package and has given each board and bureau the task of completing their own individual exemption requests customized to their specific requirements. However, we are waiting for the Department of Finance's paperwork requirements to request exemptions. Additionally, budgets is working with the Department of Finance to determine if DCA has already reached their required budget reductions so that our department, as a whole, would be exempt from the hiring restrictions. BRN has been charged with extremely strict case completion time frames yet we continue to lack the ability to fill the necessary, approved positions, or to backfill our existing vacancies.

Before the hiring freeze was instituted in February, we were fortunate enough to fill one of our two vacant OT/Support vacancies with Yadira Quintana, who transferred from Contractors State Licensing Board; and one of our new limited term Complaint Intake SSA positions with Lisa Hall, who transferred from the Bureau of Electronic Appliance Repair, Home Furnishings and Thermal Insulation. In addition to her Complaint Intake duties, we plan to cross-train Lisa in serving accusations and processing final decisions to serve as back up to the only analyst we have doing these duties. Yadira has taken to her support duties in record time. Both employees have adapted well to our unit and are definite assets to our team.

We have been unable to fill the Cite and Fine AGPA position vacated by Shannan Borton on December 20, 2010, or the OT position vacated by Ed Montoya on January 3, 2011.

In anticipation of a hiring window, interviews were held in December for various positions which yielded several quality candidates. Unfortunately, the hiring window did not happen and we can only hope that these individuals will still be available if/when we are able to hire.

We continue to be very concerned that our three existing limited term staff will either be forced to leave state service or return to their previous positions since they will not be able to stay beyond their two year hiring period which will end within the next two months. We have exhausted all measures to keep these employees; however, with the hiring restrictions, we will most likely lose all three, leaving the Enforcement unit only 13.5 staff members, plus the program manager.

Kathy Hodge is attending the eight-session DCA Management Academy which will be completed on April 7. Several Enforcement staff are enrolled in the next DCA Enforcement Academy scheduled for March 14-18.

#### **Program**

Until February 25, 2011, the Citation and Fine Program had been suspended for two months due to lack of available staff resources. In addition, with the loss of two of three OT/Support staff during Dec/Jan/Feb, the case analysts had to complete their own support staff tasks in addition to managing their cases, resulting in slower case movement and highly reduced follow-up with the Attorney General's office. In addition to her case management duties, Lorraine Clarke has stepped up and been trained to work the Cite and Fine desk as her time permits. We currently have 125 pending citations, many of which may result in informal citation conferences.

Approximately 850 license renewal holds have been placed on licensees for license expiration in March and April 2011, who have not complied with the retroactive fingerprint requirements and the BRN has no proof of submission. Enforcement will work with the fingerprint liaison in the Administration unit to add license renewal holds for all licensees who have not complied with the retroactive fingerprint requirements. We will also work to send out letters to these licensees in an effort to resolve the renewal holds before the licensee renews the license as time and resources permit.

We have been having work sessions with case analysts and complaint intake to go over complaint action criteria to ensure consistency in handling the various types of complaints.

BRN was audited by the FBI on February 9, 2011, and are pleased to report we passed the audit. We learned that information being reported to DOJ from the FBI is filtered before it is sent to us. When the FBI reports criminal information to DOJ, federal law requires the individual state to confirm convictions prior to dissemination requesting agencies. This answers questions as to why we many times do not receive dates on FBI convictions. The FBI auditor was scheduled to audit DOJ the following day and address issues raised by BRN staff.

We are now receiving electronic billing information on a monthly basis from the Attorney General's office and are still working to determine where the money is being spent. We have grave concerns about the time spent and billed to the BRN as we have been told by AGO staff that their billing is

based on a minimum billing amount of 15 minute increments. So we are billed 15 minutes for all emails read, all emails responded to are an additional 15 minutes, even if the email only takes 1-2 minutes to read or respond to. That totals \$42.50 for each exchange of information.

The BRN Enforcement and Probation programs began preparing and serving default decisions coming out of the Oakland and San Francisco AG's offices as of December 25, 2010. Evaluation of the pilot project has been extremely limited as Enforcement has only received one qualifying default case since the pilot began. Staff has worked with Don Chang to define necessary documents to be included in the evidentiary packets and a process is in place for legal review and approval of all defaults prepared by both units. Due to the small number of defaults prepared during the pilot program we cannot make a determination whether it is appropriate to return all defaults to the BRN. We plan to ask for an extension of the pilot to give us an opportunity to collect more data to support the BRN resuming the responsibility of preparing defaults from all AG offices.

### **BRN Investigations**

We only have two retired annuitant investigators actively working our cases in Northern California. The Department of Personnel Administration approved the use of the Special Investigator classification for the BRN in January 2011. However, we have not been allowed to hire for any of these positions. Because we only have the two retired annuitant investigators and the one BRN investigation analyst was hired by the Probation Program we have changed our complaint intake review process by moving it back to the case analysts. All complaints determined to need formal investigation and prioritized as high or urgent are referred to the DOI regardless of whether the complaints meet the DOI case investigation criteria. Only routine case investigations are being held for BRN investigation.

We have sent back 30 cases to DOI which were reviewed by the NECs for focused investigations. An additional 116 of our oldest cases have also been sent back to DOI for investigation. DOI has met with Rico Stephan and Stacie Berumen to review and identify cases that will be returned to DOI for investigation. The BRN cases have been identified by zip code and can be referred back to offices who can handle the additional workload.

### **Statistics**

There are 603 pending DOI investigations and 551 pending BRN investigations. There are 1,194 cases pending at the AG's office which continues to be the highest ever. The BRN continues to be the AGO's biggest client, surpassing the Contractor's State Licensing Board.

From July 1, 2010 to February 25, 2011, enforcement served 729 accusations. Enforcement prepared nine (9) default decisions from July 1, 2010 to February 25, 2010, prior to the process returning to the AG's office on July 27, 2010.

Please review the old monthly enforcement report (attachment) which has additional breakdowns of information. The new report required to be submitted to the Deputy Director of Enforcement and Compliance will be included in the next committee packet due to quarterly reporting.

## 8.5 Probation Program Update and Statistics

### Staff

The probation program has a vacant limited term Office Technician position and completed recruitment efforts to fill this position. With the limitations of only being allowed to hire DCA lateral transfer candidates, we did not receive any eligible candidates. The position has 19 months remaining of the 24 months allowed.

### Program

The Probation Program staff completed the course design for the probation monitor training. This course will be comprehensive training to provide actual tools and knowledge for probation monitors state wide. The probation staff will provide a portion of the training on February 28 and March 1, 2011. Additionally, the probation staff will provide training at the third Enforcement Academy in March.

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records. Updates will be provided at each DDC meeting.

The Probation Program is assisting the Legal Affairs Division with the review and update of the Recommended Guidelines for Disciplinary Orders and Conditions of Probation. They were last revised in 2002 and are long overdue for cleanup and to incorporate recent legislative and regulatory changes.

### Statistics

Below are the statistics for the Probation program from December 18, 2010 to March 9, 2011.

Probation Data	Numbers	% of Total
Male	106	24%
Female	330	76%
Chemical Dependency	247	57%
Probation Data	Numbers	% of Total
Practice Case	142	33%
Mental Health	3	<1%
Conviction	47	11%
Advanced Certificates	34	8%
Southern California	234	54%
Northern California	202	46%
Pending at the AG	79	18%
License Revoked	0	0
License Surrendered	5	1%
Terminated	5	1%
Completed	14	3%
Total in-state probationers	436	

## **8.6 Diversion Program Update and Statistics**

### **Program Update**

As a result of the Department of Consumer Affairs' recent legal decision requiring all board Diversion Evaluation Committees (DECs) meetings post the meetings on the respective board web sites, some participants have voiced concerns about coming to the meetings and continuing with their recovery. They are not sure what impact the information posted on the internet will have on their recovery program. Staff remains vigilant regarding participant apprehension to determine if it impedes the recovery of any participants. Subsequently, on February 10, 2011, seven students from one of the nursing schools attended a DEC meeting in the Bay area believing it was similar to a regular BRN board meeting. The DEC members and program manager took the opportunity to educate the students about the Diversion Program regarding the dangers of substance abuse and its correlation with stress in the nursing workplace. They were invited to return to the official DDC and board meetings in March and April 2011.

On March 16, 2011, First Lab will provide a "Best Practices Conference" in Sacramento regarding substance abuse and drug testing. Dr. Donna Smith and Dr. Anthony Constantino, nationally recognized experts in this field, will be presenters. Dr. Donna Smith was instrumental in developing the Department of Transportation (DOT) national guidelines and Dr. Constantino is a published expert in forensic toxicology. The board members, DEC members, and BRN staff are invited to attend the training. An update will be provided at the next meeting.

On April 18, 2011, the program manager, Carol Stanford and program director, Virginia Matthews will be presenters at an education seminar sponsored by the Hospital Association of Southern California. This seminar will provide critical information regarding the BRN's Diversion Program and will be attended by Human Resources Executives/Directors/Specialists and Chief Nursing Officers/Executives who are aware that RNs are not immune from the disease of substance abuse and mental illness. A draft copy of the agenda is available upon your request.

### **Contractor Update**

BRN staff along with other Program Managers from other boards attended HIPAA training sponsored by Maximus on January 11, 2011. The objectives of the training was to; know what HIPAA is and the requirements for handling Protected Health Information (PHI), understand the Maximus policy on HIPAA and PHI, and understand individual's rights under HIPAA.

BRN began increasing drug testing in response to implementing SB1441. A review of trend data shows no significant increase in positive test results. Additionally, there does not appear to be any noteworthy increase in relapses over the past quarters. Virginia Matthews, Maximus Program Director, will present a brief report and overview regarding upcoming events and developments.

### **Diversion Evaluation Committees (DEC)**

In a concerted effort to fill the six outstanding physician vacancies on our committees our new staff sent over 300 letters out on February 23rd to physician members of the California Society of Addiction Medicine (CSAM). The physicians were invited to submit an application and resume to the BRN if they are interested in giving back to our health communities by becoming DEC members for the BRN's Diversion Program. We immediately received positive responses to our request.

There are currently 12 vacancies as follows: four Registered Nurses, six Physicians, and two Public members. Recruitment efforts continue.

### **Statistics**

Attached is the Monthly Statistical Summary Report for December 2010, and January, 2011. As of January 31, 2011, there were 1,528 successful completions.

### **8.6.1 Diversion Evaluation Committee Resignation**

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in chemical dependency and/or mental health.

The following Diversion Evaluation Committee member has resigned for personal reasons. Her efforts will be recognized and a letter of appreciation will be mailed out.

### **RESIGNATION**

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Rhonda Ceccato	Public	Oakland	13

### **8.6.2 Diversion Evaluation Committee Member Appointments & Reappointments**

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in substance use and abuse disorders and/or mental health.

### **APPOINTMENTS**

Below are the names of candidates who were interviewed and are being recommended for appointment to the Diversion Evaluation Committees (DEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2015

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Glen Weedeem	Physician	Burbank	8
Christopher Schaal	RN	Bay Area	2

### **REAPPOINTMENTS**

Below are the names of members who are being recommended for reappointment to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2015



<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Marshall Alameida	RN	Bay Area	2
Judith Morgan	Public	Oakland	13
Deborah Steele	RN	Fresno	5
Mary Hegarty	RN	San Jose	7
Fran Goodman	RN	San Jose	7
William Slavin	Public	Burbank	8
Cindy Simpson	Public	Santa Ana	14

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2014

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Romana Zvereva	Physician	Los Angeles	3
Suzette Otlewis	Nurse	Orange County	4

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2013

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Robert Rowden	Physician	Sacramento	1
Janis Jones	Nurse	Palm Springs	6
David Silverman	Public	San Jose	7
Sara Ohringer	Nurse	Burbank	8
Juan Martinez	Public	North Central	12
Barbara Leva	Nurse	Santa Ana	14

**Approve/Not Approve:** Appointments and Reappointments of Diversion Evaluation Committee Members

**M/S/C: Moved by Rick Rice, Seconded by Judy Corless, Carried**

#### **8.7 Public Comment for Items Not on the Agenda**

No public comments received.

The Chair adjourned the committee meeting at 9:53 a.m.

Approved: \_\_\_\_\_

